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TETUAN KANG & KANG

v.

KIRANA STUDIO SDN BHD

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HIGH COURT MALAYA, KUALA LUMPUR
SM KOMATHY SUPPIAH JC
[CIVIL APPEAL NO: 12BNCVC-100-04-2014]
11 AUGUST 2014

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LEGAL PROFESSION: *Bill of costs – Legal fees – Failure to settle – Recovery of – Whether there was legal relationship between parties – Whether proven – Whether solicitor's bill challenged – Taxation of bill – Whether sought by client – Whether request made for a detailed bill – Whether bill challenged within stipulated time – Whether amount claimed became final and payable – Whether respondent lost its rights to challenge amount claimed – Legal Profession Act 1976,*

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ss. 121, 124, 126 & 128

The issues addressed in this case were in relation to a solicitor-client relationship and the rights to challenge the solicitor's bill after expiry of the period limited for taxation. The appellant was a firm of advocates and solicitors and one of its partners was Manmohan Singh. Having perused the

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draft retainer agreement sent by the appellant, the respondent decided that the appellant's services were no longer required. The appellant then rendered an invoice, a gross sum bill, for RM330,880 to the respondent for legal advice and work done. Since the respondent failed to settle the outstanding sum, a suit was filed in the Sessions Court where the trial judge decided, *inter*

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alia, that (i) there was a failure to prove that a contractual relationship existed between the parties; (ii) Manmohan Singh was acting in his personal capacity; and (iii) there was a failure to prove that the amount claimed was fair and reasonable. Dissatisfied, the appellant appealed against the decision. It was argued that (a) the learned trial judge failed to take into consideration

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the e-mail correspondence between the parties; and (b) by virtue of the statutory provisions laid down in the Legal Profession Act 1976 ('LPA'), a solicitor's bill can only be challenged by taxation in the High Court. The respondent, however, contended that since it did not have a fee agreement with the appellant, the latter was only entitled to fees in accordance with the Solicitors' Remuneration Order 2005.

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Held (allowing appeal):

(1) In the numerous e-mail exchanges between Manmohan Singh and the respondent, Manmohan Singh signed off as a partner of the appellant firm with its full details and contact including the customary exclusion

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clause at the foot of each mail in order to protect confidentiality. It demonstrated that Manmohan Singh was dealing with the respondent in his capacity as a partner of the firm and not in his personal capacity. (para 28)

(2) Manmohan Singh's business card stated both his personal Gmail address and the office e-mail address. A perusal of all these e-mails indicated that they were for work related to his legal firm. Further, Manmohan Singh had named the firm in the draft retainer agreement instead of himself. Hence, there was a legal relationship between the parties. (paras 29 & 40)

(3) When served with a solicitor's bill of costs, the client was entitled to request for a detailed bill where the bill rendered was a gross sum bill that did not provide a breakdown of how the sum claim was arrived at. If the solicitor failed to do so, the bill becomes invalid as provided under s. 121(1)(a) of the LPA and could not be used to maintain an action for recovery of the legal fees under s. 124. (para 21)

(4) An invoice delivered by a solicitor to his client becomes a *bona fide* bill by virtue of the rebuttable presumption encapsulated in s. 124(2) of the LPA. The presumption is triggered in the absence of any objection or challenge to the solicitor's bill. The client has one year from the date of delivery of the bill to tax it if he disputes the amount claimed. If the client does not avail himself of this procedure, then his remedy under the LPA to challenge the bill is extinguished by s. 128(2) of the LPA. Taxation outside this period was not permissible. On the facts, the respondent did not seek taxation of the invoice at any point in time and the period mentioned in s. 128(2) had expired. By operation of the statutory prohibition in s. 128(2), the amount claimed in the invoice had become final and payable. Hence, it could not be disputed or challenged. (paras 33 & 34)

(5) There was no evidence to show that a request was made by the respondent for a detailed bill when the invoice was delivered to it. There was no obligation on the solicitor to prove that his fees were reasonable if his client did not invoke the statutory remedy under the LPA. Further, the Solicitors' Remuneration Order 2005 did not override the provisions in the LPA which provide that a client who did not seek taxation of the bill cannot thereafter challenge it. On the facts, the respondent lost its rights to challenge the amount claimed in the invoice (*HMJ Shaharom & KS Wee v. Kumpulan Wang Amanah Pencen*; dist). (paras 37-40)

Case(s) referred to:

HMJ Shaharom & KS Wee v. Kumpulan Wang Amanah Pencen [2013] 3 CLJ 423 HC ***(dist)***

Tanjung Emas v. Adnan, Sundra & Low [2001] 1 LNS 386 HC ***(refd)***

Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese [2010] 8 CLJ 754 HC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 37, 121(1)(a), 124(2), 126(1), 128(2)

Rules of Court 2012, O. 18 r. 10

A *For the appellant - Renu Zechariah; M/s Rosley Zechariah*
For the respondent - Ringo Low Kim Leng (Choy Chi Peng with him); M/s Ringo Low & Assocs

[Appeal from Sessions Court; Suit No: B52NCVC-94-10-2013]

B *Reported by Sandra Gabriel*

JUDGMENT

SM Komathy Suppiah JC:

C **[1]** This appeal concerns a solicitor's bill for non-contention work done and raises two issues, to wit whether there was a solicitor-client relationship between the parties and whether a client may challenge his solicitor's bill notwithstanding the expiry of the period limited for taxation.

[2] On 21 March 2014, the Sessions Court Judge had dismissed the D plaintiff's claim for legal fees of RM330,880 after a full trial with costs of RM6,000 to the defendant. The plaintiffs have now appealed against the dismissal of their action.

Background Facts

E **[3]** The salient facts can be stated fairly shortly and neutrally.

[4] The plaintiff is a firm of advocates & solicitors. The partners of the plaintiff firm are Manmohan Singh Kang ("Manmohan Singh") and Charanjeet Kaur Kang.

F **[5]** The defendant is a company incorporated in Malaysia. The defendant paid Manmohan Singh a retainer of RM5,000 per month for legal advice and work done on its behalf from November 2012 to June 2013 totalling RM40,000.

[6] On 8 July 2013, Manmohan Singh emailed a draft retainer agreement G to the defendant for its perusal. It read:

> Here is my retainer Agreement which is also long overdue. I have discussed the rate with Jef and KF. I need this for accounting purposes more than anything else as we are receiving a retainer but no document to refer to.

H **[7]** On 28 February 2013, the defendant sent an email to Manmohan Singh informing him that:

> We have perused your recent retainer agreement and have decided that your services is no longer required at the present moment.

I **[8]** On 18 September 2013, the plaintiff rendered an invoice ("the invoice") for RM330,880 to the defendant for legal advice and work done for the period from 1 September 2012 to 31 July 2013. The invoice acknowledged the receipt of the RM40,000 paid to Manmohan Singh. No

payment was made despite three reminders being sent *via* e-mail. Whereupon on 21 October 2013, the plaintiff issued a formal demand, and four days later, the plaintiff instituted this action against the defendant.

[9] The particulars of claim (paras. 3-5) which set out the basis of the claim are now reproduced.

> 3. Berikutan permintaan dan arahan defendan, plaintif telah bertindak sebagai peguam defendan-defendan dan menjalankan kerja-kerja guaman sebagaimana yang dibutirkan di dalam invoice plaintif kepada defendan, bernombor mf 00036 bertarikh 18 September 2013 yang berjumlah RM 330,880.00.
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> 4. Walaupun berkali-kali diminta dan dituntut oleh plaintif, defendan-defendan masih gagal atau enggan membayar atau menyelesaikan jumlah terhutang sebanyak RM330,880.00 tersebut.
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> 5. Plaintif juga telah menuntut jumlah tersebut secara rasmi melalui surat tuntutan plaintif bertarikh 21 Oktober 2013 tetapi defendan masih enggan atau gagal menyelesaikan jumlah yang dihutang kepada plaintif.

[10] The material portions of the statement of defence were in these terms:

> (1) Defendan menafi perenggan 3 dalam Pernyataan Tuntutan kerana Defendan tidak memberi arahan kepada Plaintif untuk memberi khidmat guamannya seperti yang telah ternyata dalam invois No: mf 00036 bertarikh 18.9.2013;
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> (2) Secara lanjutan dan/atau secara alternative, Defendan mengatakan bahawa rakan kongsi Plaintif Manmohan Singh Kang telah secara sukarela, tanpa sebarang permintaan dan/atau arahan daripada Defendan, member perkhidmatan yang ternyata dalam Invois No: mf 00036 bertarikh 18.9.2013 tersebut dengan tujuan untuk menyakinkan pemegang-pemegang saham syarikat Defendan supaya mempelawa beliau menjadi seorang pemegang saham dalam syarikat Defendan;
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> (3) Walaubagaimana pun, Defendan menegaskan bahawa apa-apa perkhidmatan yang telah diberikan oleh plaintif telah pun dijelaskan oleh Defendan dengan pembayaran berjumlah RM40,000.00 secara ansuran bulanan RM5,000.00 dari bulan Disember 2012 hingga bulan Jun 2013; and
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> (4) Berdasarkan kepada perkara-perkara di atas, Defendan menafi berhutang kepada plaintif seperti yang ternyata dalam perenggan 4 dalam Pernyataan Tuntutan.

[11] A notable feature of these proceedings is the inconsistent defences adopted by the defendant. The principal defence was premised on there being no contractual relationship. In the alternative, it was pleaded that Manmohan Singh had voluntarily undertaken the work so that he would be invited to become a shareholder in the defendant; and in the further alternative, the plaintiff has been paid for the services rendered.

[12] On the legality of inconsistent defences, it is, as a general rule, open to a defendant to raise in his defence, without leave, as many distinct and separate defences, subject to the provision contained in O. 18 r. 10 of the Rules of Court 2012.

Decision Of Sessions Court Judge

[13] In her grounds of judgment, the Sessions Judge stated that there were effectively two issues in the case, namely:

(i) Whether the plaintiff has performed the legal work as itemised in the invoice; and

(ii) Whether the amount stipulated in the invoice is fair and reasonable.

[14] After assessing the evidence, the Sessions Court Judge ruled against the plaintiff on both issues. She held that the plaintiff had failed to prove a contractual relationship and, also failed to prove that the amount claimed was fair and reasonable. She further made the following findings of fact:

(b) The RM40,000.00 received as initial retainer was all that was due to the plaintiff;

(c) the promise of shares by one Jeffrey Ong in the defendant company was all the consideration due for the work done;

(d) that Manmohan Singh was acting in his personal capacity; and

(e) that the absence of written opinions and agreements demonstrated that the plaintiff had failed to prove that the work itemised in the invoice had been done.

Arguments On appeal

[15] In support of the appeal, the plaintiff contended that the Sessions Court Judge's finding that there was no contractual or legal relationship between the plaintiff and the defendant was inconsistent with the contemporaneous correspondence in the case. The Sessions Court Judge had failed to take into account the email correspondence between the parties.

[16] It was next argued that the Sessions Court Judge had erred in permitting the defendant to challenge the amount claimed in the invoice *via* cross-examination of Manmohan Singh. This argument was premised on the fact that the invoice delivered to the defendant had become "a *bona fide* bill" by virtue of the rebuttable presumption contained in s. 124(2) of the Legal Profession Act 1976 ("LPA") on account of the defendant's failure to challenge or query it. The procedure adopted by the defendant in the Sessions Court was contrary to the statutory procedure laid down in ss. 124, 126 and 128 of the LPA which expressly provided that a solicitor's bill can only be challenged by taxation in the High Court.

[17] I have very much abbreviated the full submissions of the plaintiff. They are much more fully adumbrated in the skeletal arguments filed by the plaintiff. I set out the main points:

(4) As submitted earlier, the respondent's case is in sixes and sevens with itself. On one hand they are saying that they did not give instructions but on the other hand they are saying that the sum of RM40,000.00 was paid as full and final. This sum of RM40,000.00 was reflected in the invoice from day one.

Why was there no challenge if the respondent now seem to be suggesting that it was PW1 that acted on his own and the appellant firm was never appointed? The invoice shows that the RM40,000.00 was paid to the appellant firm.

(5) If this special loophole was permissible, it would make a mockery of the provisions of the LPA. Every defendant will come up with ingenious reasons why the LPA does not apply. In fact, there is not one single case in the law reports that can or may lend credence to the respondent's novel attempt at circumventing the law.

(6) Looking at the reasoning in the said paragraph 19 of the respondent's submission, it is respectfully submitted that the respondent is putting the carriage before the horse. One is not a liberty of unilaterally declaring that a bill is not *bona fide* and therefore it is exempt from section 124 and 126 of the LPA. The correct procedure for a client would be to challenge the bill by way of taxation once it has been served as provided for in section 124 and 126 LPA. There is no other way to challenge whether it is a *bona fide* bill.

[18] In opposing the appeal, the defendant countered the plaintiff's submission by arguing that the Sessions Court Judge did not err in coming to the conclusion that the contemporaneous correspondence was inconsistent with the plaintiff's case. In the absence of a solicitor-client relationship, there was no obligation on the defendant to seek taxation of the bill. In the alternative, the defendant challenged the validity of the proposition advanced by the plaintiff that a bill which is deemed "a *bona fide* bill" under s. 124(2) of the LPA can only be challenged by taxation in the High Court. It was argued that the taxation procedure laid down in s. 126(1) of the LPA was not mandatory as the phrase used in the provision is "may be obtained ...".

[19] In any event, the defendant contended that as it did not have a fee agreement with the plaintiff, the latter was only entitled to fees in accordance with the Solicitors' Remuneration Order 2005. The defendant relied on the decision in *HMJ Shaharom & KS Wee v. Kumpulan Wang Amanah Pencen* [2013] 3 CLJ 423 in support of its proposition.

A **Legal Profession Act 1976**

[20] The solicitors' profession is heavily regulated. It is necessary to refer to those provisions of the LPA that are relevant to the appeal. They are as follows:

B Section 121:

(1) Where the remuneration of an advocate and solicitor in respect of contentious business done by him is not the subject of an agreement made pursuant to section 116, the solicitor's bill of costs may at the option of the advocate and solicitor either contain detailed items or be for a gross sum:

C Provided that:

(a) at any time before service upon him of a writ or other originating process for the recovery of costs included in a gross sum bill and before the expiration of three months from the date of the delivery to him of the bill, the party chargeable therewith may require the advocate and solicitor to deliver to him *in lieu* of the cost a bill containing detailed items, and the gross sum bill shall thereupon be of no effect;

(b) where an action is commenced on a gross sum bill, the Court shall, if so requested by the party chargeable therewith before the expiration of one month from the service on that party of the writ or other originating process, order that the bill shall be taxed;

(c) if a gross sum bill is referred to taxation, whether under this section or otherwise, nothing in this section shall prejudice any rules of court with respect to taxation and the advocate and solicitor shall furnish the taxing officer with such details of any of the costs covered by the bill as the taxing officer may require.

(2) Subsection (1) shall not apply to fees paid to an advocate and solicitor who is briefed as a senior counsel.

G Section 124:

(1) Except as authorized by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done by him until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of abode, a bill of costs, which bill shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill.

(2) Where a bill is proved to have been delivered in compliance with subsection (1) it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill *bona fide* complying with this Act.

Section 126:

(1) An order for the taxation of a bill of costs delivered by any advocate and solicitor may be obtained by a petition as a matter of course by the party chargeable therewith, or by any person liable to pay the cost either to the party chargeable or to the advocate and solicitor, at any time within six months from the delivery of the bill, or, by the advocate and solicitor after the expiration of one calendar month, and within a year from, the delivery.

(2) The order shall contain such directions and conditions as the court thinks proper, and any party aggrieved by any order of Court may apply by summons in chambers that the same may be amended or varied or set aside.

(3) In any case where an advocate and solicitor and his client consent to taxation of a solicitor's bill the Registrar may proceed to tax the bill notwithstanding that there is no order therefor.

Section 128:

(1) After the expiration of six months from the delivery of a bill of costs, or after payment of the bill of costs, no order shall be made for taxation of a solicitor's bill of costs, except upon notice to the advocates and solicitors and under special circumstances to be proved to the satisfaction of the Court.

(2) No such order for taxation shall in any event be made after the expiry of one year from the delivery of the bill of costs.

[21] The principles of law and practice governing the issue and taxation of solicitors' bills of costs are set out in the above provisions. A solicitor cannot commence or maintain any action for the recovery of legal fees until the expiration of one month after he has delivered a bill to his client. A client when served with a solicitor's bill of costs, whether in respect of contentious or non-contentious work, is entitled to request for a detailed bill where the bill rendered is a gross sum bill that does not give a breakdown of how the sum claimed was arrived at. If the solicitor fails to do so, the bill becomes invalid as provided in s. 121(1)(a) of the LPA and cannot be used to maintain an action for recovery of legal fees under s. 124. Section 126(1) of the LPA gives the client the right, within six months of delivery of the bill, to apply to the High Court for the bill to be taxed. If no such application is made, the absolute right to taxation is lost. However, if the client applies to the High Court for taxation of the bill after the expiry of six months from delivery of the bill, the, the court may only order taxation if special circumstances are shown. No taxation at all can be ordered after the expiration of 12 months from delivery of bill. Section 128(2) creates an absolute bar.

A **Case Law**

[22] I shall now examine the case law.

[23] In *Tanjung Emas v. Adnan, Sundra & Low* [2001] 1 LNS 386; [2001] 1 MLJU 59, the plaintiff sued in the Sessions Court on a solicitor's bill. The
B defendant accepted that it had retained the plaintiff but alleged that there was no liability to pay as the work was not done by the plaintiff. The defendant then made an application for the proceedings to be stayed for the plaintiff to take steps to have the costs taxed. The Sessions Court Judge dismissed the application and the defendant appealed to the High Court. In dismissing the
C appeal, KC Vohrah J said:

> In any event matters relating to a solicitor's bill of costs are governed by the procedures prescribed under the Legal Profession Act 1967 where redress ought to be sought in the High Court under Part 1X thereof.
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> ...
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D Surely it is for the defendant to take the initiative within the ambit of the Legal Profession Act 1967 in the proper forum, the High Court, to tax the bill of costs and address matters thereon in that forum not the Sessions Court as was done in this case ...

[24] In *Templer Park Golf & Resort Bhd & Anor v. Tetuan George Varughese*
E [2010] 8 CLJ 754, Hamid Sultan Abu Backer J (as he then was) in construing s. 124(2) of the LPA held:

> The contents of the solicitor's bill were presumed by law to be *bona fide* and the necessity to prove the contents of the bill and to tax the bill on the facts of this case did not arise due to several provisions of the LPA
F 1976. Under s. 124(2) once the bill had been delivered in compliance with sub-s. (1) it shall not be necessary in the first instance for the advocate and solicitor to prove the contents of the bill and it shall be presumed until the contrary is shown to be a bill *bona fide* complying with this Act.

And later added:

G > When the dispute is to solicitor's bill, different jurisprudence applies as solicitors are a protected species, subject to the scrutiny by solicitors disciplinary board and/or the court in relation to bills for work done as provided for in the LPA 1976. Dispute as to solicitor's bills must be challenged according to the law ...

H **[25]** In *HMJ Shaharom* (*supra* at para. 19), Hamid Sultan Abu Backer J held:

> At the outset it must be said that whether it is a contentious or non-contentious matter, the LPA 1976 sets out a methodology as to how a bill of costs ought to be dealt with when there is dispute. Failure to adhere to the strict provisions of the LPA 1976 will be fatal to the solicitor
I or his client.

[26] The views expressed in the respective judgments illustrate that a client who does not avail himself of the taxation provisions in the LPA, loses his statutory right to challenge the bill.

Analysis

[27] There are two principal issues that I need to address in this appeal.

[28] The first, whether the Sessions Court Judge was right in coming to the conclusion that there was no contractual relationship between the parties. The crucial evidence that needs to be examined in this context would be the contemporaneous documents. It is common ground that there were numerous e-mail exchanges between Manmohan Singh and the defendant during the material time. In these e-mails, Manmohan Singh had signed off as a partner of the plaintiff's firm with the plaintiff's firm's full details and contact including the customary exclusion clause at the foot of each mail to protect confidentiality. In my judgment, this is vital evidence that the Sessions Court Judge had overlooked in concluding that there was no legal relationship between the parties. If demonstrates that Manmohan Singh was dealing with the defendant in his capacity as a partner of the plaintiff's firm and not in his personal capacity.

[29] It is true that Manmohan Singh had used his personal Gmail account to send these e-mails. I do not agree with the defendant's contention that this evidence demolishes the plaintiff's case. In my view, it proves nothing especially since the business card of Manmohan Singh carried both his personal Gmail address and the office e-mail address. In any event, a perusal of all these e-mails indicated that they were for work related to his legal firm.

[30] It is also noteworthy that in the defendant's e-mail that was sent to Manmohan Singh after the receipt of the draft retainer agreement, it had not recorded any surprise that Manmohan Singh had named the plaintiff in the draft retainer agreement instead of himself. If indeed the defendant had no legal relationship with the plaintiff, it is improbable that the defendant would not have alluded to it in their reply.

[31] *En passant*, it is to be noted that it would be unlawful and an infringement of s. 37 of the LPA for Manmohan Singh to act in his personal capacity and provide legal services. Further, his practising certificate only permitted him to practice law as an advocate and solicitor of the firm of Tetuan Kang & Kang. He cannot in law purport to practice as an advocate and solicitor under any other capacity other than under the name and style of Tetuan Kang & Kang.

Second Issue: Whether The Invoice Can Be Challenged?

[32] The next issue has to do with whether the defendant has lost its right to challenge the amount claimed in the invoice. The invoice in the present case is a gross sum bill. The Sessions Court Judge had in reliance on *HMJ Shaharom* permitted the defendant to challenge the quantum claimed by the plaintiffs, although the period during which it may apply for taxation had expired at the material time.

[33] The question arises, was whether the judge is correct in so doing. An invoice delivered by a solicitor to his client becomes a *bona fide* bill by virtue of the rebuttable presumption encapsulated in s. 124(2) of the LPA. The presumption is triggered in the absence of any objection or challenge to the solicitor's bill. The bill is valid for the purposes of s. 124. The client has one year from the date of delivery of the bill to tax the bill if he disputes the amount claimed. If the client does not avail himself of this procedure, his remedy under the LPA to challenge the bill is extinguished by s. 128(2) of the LPA. This provision provides that the power to order an assessment shall not be exercisable on an application made by the client after the expiration of twelve months from the delivery of the bill. No taxation outside this period is permissible.

[34] Turning to the facts in this instant case. The defendant did not seek taxation of the invoice at any point in time and the period mentioned in s. 128(2) of the LPA has expired. By operation of the statutory prohibition in s. 128(2), the amount claimed in the invoice has become final and payable. It cannot be disputed or challenged.

[35] I now turn to consider the defendant's alternative contention that notwithstanding that the period during which he may apply for taxation has expired, the Solicitors' Remuneration Order 2005 imposed an obligation on the plaintiff to prove that the amount claimed was reasonable. As noted earlier, the basis of this submission is the decision in *HMJ Shahrom* ([at 21] *supra*) wherein a solicitor's claim for legal fees was dismissed, notwithstanding that the period during which the defendant may apply for taxation had expired. It therefore behoves me to examine the facts in that case in order to see why the claim was dismissed.

[36] In *HMJ Shaharom* the plaintiff delivered a gross sum bill to the defendant for legal fees. The defendant required the plaintiff to furnish it with a detailed bill of costs so that the bill can be taxed. The plaintiff declined on the basis that that the fees claimed were for non-contentious matter. The learned judge dismissed the plaintiff's claim *in limine* on the basis that the plaintiff refusal to deliver a detailed bill rendered the gross sum bill "of no effect" as provided in s. 121(a)(1) of the LPA. In consequence, there was no valid bill, a prerequisite to the accrual of a cause of action under s. 124(1) of the LPA in relation to a claim for legal fees.

[37] I fail to see how the decision in *HMJ Shaharom* is of assistance to the defendant. The facts in that case contrast, it seems to me, very obviously with those in the present case. In the present case, there is no evidence that a request was made by the defendant for a detailed bill when the invoice was delivered to it. *HMJ Shaharom* therefore does not represent authority for the proposition that a client who is sued by his solicitor for legal fees is entitled to challenge the reasonableness of the sum claimed, notwithstanding that the

period during which he may apply for taxation has expired. The Sessions Court Judge was therefore wrong in relying on that case to allow the defendant to challenge the invoice in the Sessions Court.

[38] The authorities show quite clearly that the defendant's submission that the LPA does not restrict a client's right to challenge his solicitor's bill is wrong. The LPA introduced a taxation procedure, because it was regarded as more convenient and advantageous for the client, and perhaps for both parties, than the existing procedures were. There is no obligation on the solicitor to prove that his fees are reasonable, if his client does not invoke his statutory remedy under the LPA. It cannot be gainsaid that a solicitor will be disadvantaged by the possibility that the client is entitled to have the reasonableness of the charges looked into by the court after the statutory period for taxation has expired.

[39] Despite the defendant's submission to the contrary, it seems to me that Solicitors' Remuneration Order 2005 does not override the provisions in the LPA which expressly and clearly provide that a client who does not seek taxation of the bill cannot thereafter challenge it.

Conclusion

[40] In my judgment, there are two bases for concluding that the appeal ought to be allowed. First, there was overwhelming evidence to show a legal relationship between the parties and secondly, the defendant had lost its right to challenge the amount claimed in the invoice.

[41] I would therefore allow the appeal as set out hereunder:

> Appeal allowed. Judgment entered for RM 330,888.00 for the appellant with costs of RM10,000.00 here and RM6,000.00 below.